

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KRISTAL BOX ROBISON,

Plaintiff,

v.

ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY, a foreign
insurer,

Defendant.

CASE NO. 2:23-cv-216

ORDER

1. INTRODUCTION

This matter comes before the Court on Defendant Allstate Fire And Casualty Insurance Company's Motion For Partial Summary Judgment. Dkt. No. 10. Allstate moves for summary judgment on Plaintiff Kristal Box-Robison's Insurance Fair Conduct Act (IFCA), breach of fiduciary duty, and estoppel claims. Allstate also seeks partial dismissal of Box-Robison's bad faith, negligence, and Washington Consumer Protection Act claims.

Having considered the papers submitted in support of and opposition to the motion, the record, and being otherwise fully informed, the Court GRANTS

1 Allstate's motion for partial summary judgment of Box-Robison's breach of fiduciary
2 duty and estoppel claims and DENIES its remaining requests.

3 2. BACKGROUND

4 In 2017, Box-Robison's car was struck by an underinsured driver. Dkt. No. 1-
5 ¶ 3.3. Box-Robison received a \$100,000 policy limit settlement from the at-fault
6 driver's insurance company. *Id.* ¶ 3.5. At the time of the accident, Box-Robison held
7 an Allstate automobile insurance policy, including Personal Injury Protection
8 ("PIP") and underinsured motorist ("UIM") coverage in the amount of \$250,000. *Id.*
9 ¶ 1.3, 3.2. Box-Robison opened a PIP claim for her medical bills and Allstate paid
10 the \$35,000 policy limit. Dkt. No. 12 ¶ 6.

11 Box-Robison eventually submitted a UIM claim to Allstate. Dkt. No. 12 at 2.
12 Allstate made several offers to Box-Robison to settle the claim. *See id.* On
13 September 22, 2021, Allstate offered her \$22,163. Dkt. Nos. 12-3 at 2; 15-3 at 5.
14 Box-Robison rejected this offer, explaining that it was too low to compensate her for
15 pain and injuries. Dkt. No. 15-3 at 5. According to Box-Robison's main treating
16 physician, Dr. Irfan Ansari, M.D., those injuries included Thoracic Outlet
17 Syndrome, a permanent condition, Carpal Tunnel Syndrome, requiring surgery, and
18 nerve pain. Dkt. Nos. 15-3 at 5; 17. Dr. Ansari attributed all Box-Robison's injuries
19 and the attendant treatments to the accident. Dkt. No. 15-3 at 5. She takes
20 medication for her injuries, cannot perform activities that she did beforehand, and
21 is considering anti-depressants. *See id.* Box-Robison offered to arrange a telephone
22 conference between Allstate and Dr. Ansari. *Id.*

1 On June 13, 2022, after two prior offers, Allstate offered Box-Robison \$55,000
2 to settle her UIM claim. Dkt. No. 12-5 at 2. In a letter to Allstate dated June 17,
3 2022, Box-Robison described the offer as “so low” and requested a breakdown of the
4 latest offer. Dkt. Nos. 15-3 at 17; 15-6 at 1. Box-Robison posed a series of questions
5 about how Allstate evaluated her claim, including questions about current and
6 future pain and suffering, future medical treatment, loss of consortium, and how
7 much Allstate calculated for each specific injury and offered to arrange for Dr.
8 Ansari to speak with Allstate. Dkt. No. 15-3.

9 Allstate responded in a letter also dated June 17, 2022. Dkt. No. 15-3 at 19.
10 Allstate offered the following breakdown of its \$55,000 settlement offer: “\$43,837.73
11 in medical specials, plus \$134,369.96 in general damages = \$178,207.69 gross claim
12 value. Minus \$35,000 in PIP and \$100,000 underlying liability settlement =
13 \$42,207.69 new money UIM, plus \$11,792.31 estimated *Winter’s* fees = \$55,000.” *Id.*
14 Allstate claimed that it was not required to provide a breakdown of general
15 damages and invited Box-Robison to provide signed statements from her medical
16 providers to the extent there was information to be learned outside what was
17 contained in her medical records. *Id.* Allstate’s view was that it was unnecessary to
18 speak with Box-Robison’s providers “at [that] time” and that “all treatment and
19 medical records had been considered,” including Box-Robison’s deposition
20 transcript. *Id.*

21 Allstate subsequently emailed Box-Robison to inform her that it was
22 reviewing additional documents she provided. *See id.* at 20-21. On November 7,
23 2022, Allstate informed Box-Robison that it had an independent records review

1 performed by Dr. Linda Wray. *Id.* at 22. Dr. Wray did “not relate the majority of Ms.
2 Box Robison’s ongoing complaints and treatment to the [accident],” and Allstate
3 reiterated its prior settlement offer of \$55,000. *Id.*

4 On December 22, 2022, Box-Robison sent Allstate an IFCA notice. *Id.* at 1.
5 The notice stated Allstate “unreasonably investigated and evaluated, and delayed
6 payment of” Box-Robison’s UIM insurance in violation of IFCA. *Id.* Box-Robison
7 claimed Dr. Wray did not review all relevant documents, requested “the binder”
8 that Dr. Wray reviewed, alleged several violations of Washington insurance
9 regulations, and requested that Allstate pay the \$55,000 that Allstate offered to
10 resolve her UIM claim, as Allstate “[did] not dispute” that it was presently owed. *Id.*
11 at 3.

12 Allstate disagreed and refused to pay Box-Robison the \$55,000. Dkt. No. 15-4
13 at 1. Instead, Allstate stated that it has “neither denied coverage nor denied
14 payment of the benefits. Allstate has made a compromise offer to settle the UIM
15 claim. Ms. Robison has not accepted the compromise offer.” *Id.* Allstate contends
16 there is a “reasonable disagreement” about the amount Box-Robison is entitled to
17 under her UIM policy. *Id.* Allstate continued, “Until Ms. Box Robison and Allstate
18 reach an agreement on the amount of those damages, or until the amount of those
19 damages are determined by a trier of fact, no UIM benefits are owed to Ms. Box
20 Robison.” *Id.*

21 On January 30, 2023, Box-Robison filed a complaint in state court, which
22 Allstate removed to this Court soon after. Dkt. No. 1-1. The central issue in Box-
23 Robison’s lawsuit is Allstate’s handling of Box-Robison’s UIM claim. *See id.* ¶ 3.7-

1 3.8. Box-Robison alleges she suffered severe, permanent, and debilitating injuries
2 from the collision. *Id.* ¶ 3.4. She also alleges that she has had to undergo “multiple
3 back and neck procedures, treatments, and surgery.” *Id.* Box-Robison alleges in her
4 complaint that she has provided Allstate with significant documentation in support
5 of her UIM claim, including “extensive medical records and other evidence
6 substantiating her injuries and permanent disability,” but that Allstate
7 “consistently failed to reasonably investigate and promptly pay for UIM benefits.”
8 *Id.* Box-Robison claims that she still suffers from her injuries five years after the
9 collision.

10 3. ANALYSIS

11 3.1 Summary judgment standard.

12 “[S]ummary judgment is appropriate when there is no genuine dispute as to
13 any material fact and the movant is entitled to judgment as a matter of law.”
14 *Frlekin v. Apple, Inc.*, 979 F.3d 639, 643 (9th Cir. 2020) (internal citation omitted).
15 A dispute is “genuine” if “a reasonable jury could return a verdict for the nonmoving
16 party” and a fact is material if it “might affect the outcome of the suit under the
17 governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When
18 considering a summary judgment motion, courts must view the evidence “in the
19 light most favorable to the non-moving party.” *Barnes v. Chase Home Fin., LLC*,
20 934 F.3d 901, 906 (9th Cir. 2019) (internal citation omitted). “[S]ummary judgment
21 should be granted where the nonmoving party fails to offer evidence from which a
22 reasonable jury could return a verdict in its favor.” *Triton Energy Corp. v. Square D*
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1 Co., 68 F.3d 1216, 1221 (9th Cir. 1995). Summary judgment should also be granted
2 where there is a “complete failure of proof concerning an essential element of the
3 non-moving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

4 **3.2 IFCA.**

5 IFCA creates a cause of action for any “first party claimant to a policy of
6 insurance who is unreasonably denied a claim for coverage or payment of benefits
7 by an insurer.” RCW 48.30.015(1). “IFCA claims require that the insurer’s
8 unreasonable act or acts result in the unreasonable denial of the insured’s claim,
9 and any IFCA damages must be caused by that denial.” *Beasley v. GEICO Gen. Ins.*
10 *Co.*, 517 P.3d 500, 517 (Wash. Ct. App. 2022), *review denied*, 523 P.3d 1188 (Wash.
11 2023). “Thus, an insured cannot maintain an IFCA claim based only on the insurer’s
12 alleged violations of the insurance regulations under the Washington
13 Administrative Code; rather, the insured must also demonstrate that the insurer
14 also unreasonably denied coverage and/or payment of benefits.” *Gaekwar v. Amica*
15 *Mut. Ins. Co.*, No. 2:22-CV-1551-BJR, 2023 WL 8236983, at *3 (W.D. Wash. Nov. 28,
16 2023) (citing *Perez-Crisantos v. State Farm Fire and Cas. Co.*, 389 P.3d 476, 483
17 (Wash. 2017)).

18 Allstate argues that Box-Robison’s IFCA claim should be dismissed because
19 (1) her allegations that Allstate violated various insurance regulation cannot
20 sustain an IFCA violation, and (2) Allstate did not deny Box-Robison’s UIM claim
21 and that there is merely a disagreement over valuation. *See* Dkt. No. 10. On the
22 first point, Box-Robison concedes that she cannot base her IFCA claim solely on
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1 alleged regulatory violations, *see* Dkt. No. 14 at 10, so the Court will focus on
2 Allstate's arguments about its claims handling and whether its conduct constitutes
3 an unreasonable denial of Box-Robison's claim.

4 Allstate contends that it never denied Box-Robison's claim and that this
5 dispute is simply a difference of opinion about the value of Box-Robison's UIM
6 claim. Box-Robison responds that Allstate violated IFCA when it offered her a sum
7 far beneath the value of her claim. *See* Dkt. No. 14. More specifically, Box-Robison
8 argues Allstate violated IFCA when Allstate failed to investigate her claim, failed to
9 bring about prompt settlement, refused to settle, unreasonably denied payment of
10 Plaintiff's UIM claim, and failed to timely pay Box-Robison's claim. *Id.*

11 Allstate's position—that only an outright denial constitutes an IFCA
12 violation—does not square with the law, as Washington courts have rejected the
13 notion “that IFCA applies only if an insurer denies coverage altogether or refuses to
14 extend any settlement offer within policy limits.” *Traulsen v. Cont'l Divide Ins. Co.*,
15 534 P.3d 800 (Wash. 2023). Many courts in this district have recognized that
16 “where the insurer pays or offers to pay a paltry amount that is not in line with the
17 losses claimed, is not based on a reasoned evaluation of the facts (as known or, in
18 some cases, as would have been known had the insurer adequately investigated the
19 claim), and would not compensate the insured for the loss at issue, the benefits
20 promised in the policy are effectively denied.” *Jin v. GEICO Advantage Ins. Co.*, No.
21 2:22-CV-1714, 2023 WL 7212543, at *2 (W.D. Wash. Nov. 2, 2023) (quoting *Morella*
22 *v. Safeco Ins. Co. of Illinois*, No. C12-0672RSL, 2013 WL 1562032, at *3 (W.D.
23 Wash. Apr. 12, 2013)); *see Gaekwar v. Amica Mut. Ins. Co.*, No. 2:22-CV-1551-BJR,

1 2023 WL 8236983, at *4 (W.D. Wash. Nov. 28, 2023); *Bennett v. Homesite Ins. Co.*,
2 636 F. Supp. 3d 1267, 1274 (W.D. Wash. 2022). “Whether an offer effectively denies
3 an insured the benefits of their insurance policy is gauged by what the insurer knew
4 or should have known when it made the offer.” *Id.* (citing *Heide v. State Farm Mut.*
5 *Auto. Ins. Co.*, 261 F. Supp. 3d 1104, 1108 (W.D. Wash. 2017)).

6 Allstate offered to settle Box-Robison’s UIM claim, but Box-Robison rebuffed
7 Allstate’s multiple offers because they were “far too low to adequately compensate
8 her . . .” Dkt. Nos. 15-5 at 1, 15-7 at 1. She argues the UIM policy limit of \$250,000
9 is more appropriate. *See* Dkt. No. 15-5 at 1. The reasonableness of Allstate’s offer,
10 however, turns on the resolution of disputed facts about the scope of Box-Robison’s
11 injuries.

12 Here, not only do Allstate and Box-Robison disagree on the amount Box-
13 Robison is due under the UIM policy, they disagree about whether her injuries even
14 resulted from the accident. Box-Robison says the accident caused her Thoracic
15 Outlet Syndrome and Carpal Tunnel Syndrome, and states that her injuries will
16 continue to affect her into the future. Dkt. No. 15-7 at 1. Dr. Irfan Ansari concluded
17 that Box-Robison’s injuries were likely connected to the accident:

18 [Box-Robison’s] low back pain, as well as the diagnoses and treatment
19 of Thoracic Outlet Syndrome, and the treatment and surgery
20 associated with her Carpal Tunnel Syndrome, were connected to [Box-
Robison’s] automobile collision of April 6, 2017, on a more probable
than not basis and to a reasonable degree of medical certainty.

21 Dkt. No. 17 at 2. Robison provided this information to Allstate and even offered to
22 make Dr. Ansari available for further inquiry about his opinions, but Allstate
23 declined to speak with him. Dkt. No. 15-3 at 5. Instead, relying on Dr. Wray’s record

1 review and conclusions, Allstate “determined that Plaintiff’s alleged injuries were
2 actually quite short in duration and that none of Plaintiff’s alleged ongoing injuries
3 were due to the accident that occurred over four years ago.” Dkt. No. 10 at 6 (citing
4 Dkt. No. 12-9).

5 Thus, whether Allstate’s offer was in line with the losses claimed and the
6 result of an adequate investigation require the Court to resolve disputed facts about
7 whether Robison’s injuries were traceable to the accident, which the Court cannot
8 do on summary judgment. *See Gaekwar*, 2023 WL 8236983, at *4 (denying
9 summary judgment on plaintiff’s IFCA claim, finding question of fact about
10 reasonableness of insurance company’s settlement offer). Accordingly, Allstate’s
11 motion for summary judgment of Box-Robison’s IFCA claim is DENIED.

12 **3.3 Box-Robison’s extracontractual claims.**

13 Allstate moves to dismiss Box-Robison’s bad faith, CPA, and negligence, and
14 IFCA claims to the extent that they are based on Allstate’s declining to pay her the
15 \$55,000 UIM settlement offer.¹ Dkt. No. 10 at 3, 13. Allstate argues these claims
16 are not actionable because it has no duty to make these partial payments toward
17 settlement of Box-Robison’s UIM claim, and further, that forgoing these payments
18 is consistent with the express terms of the UIM policy and case law.

21 ¹ Allstate also moves to dismiss Box-Robison’s IFCA claim on the same basis. As
22 explained above, whether offering to settle Box-Robison’s UIM claim for \$55,000
23 constitutes an unreasonable denial of benefits (i.e., an IFCA violation) involves
questions of fact properly reserved for the jury. *See* Section 3.2.

1 Allstate presents an unnecessarily cabined view of its duty owed to Box-
2 Robison, arguing that UIM claims are adversarial and thus that the duty of good
3 faith is “muted” in the UIM context under *Ellwein v. Hartford Acc. & Indem. Co.*
4 Dkt. No. 10 at 9-10. To be sure, *Ellwein* holds that UIM insurers owe no “enhanced
5 obligation” to their insurers and are allowed to assert liability defenses that would
6 otherwise be available to the at-fault party. *Ellwein v. Hartford Acc. & Indem. Co.*,
7 15 P.3d 640, 647 (Wash. 2001), *overruled on other grounds by Smith v. Safeco Ins.*
8 *Co.*, 78 P.3d 1274 (2003). But *Ellwein* also held that the duty of good faith and fair
9 dealing is ever present—even when a UIM claim adds an adversarial element to the
10 insurer-insured relationship—because the insured still has “the reasonable
11 expectation’ that he will be dealt with fairly and in good faith by his insurer.” *Id.*
12 (internal quotation marks omitted). Put another way, *Ellwein* does not permit
13 insurance companies to take shortcuts when processing UIM claims in the way that
14 Allstate seems to suggest.

15 Whether it had “*no duty* to make . . . partial payments toward settlement of
16 Plaintiff’s UIM claim,” as Allstate contends, requires a closer inspection of Box-
17 Robison’s insurance policy. *See* Dkt. No. 10 at 14 (emphasis added). In relevant
18 part, the UIM Policy states:

19 [Allstate] will pay damages which an insured person is legally entitled
20 to recover from the owner or operator of an underinsured motor vehicle
21 because of bodily injury sustained by an insured person . . . The right to
22 receive any damages and the amount of damages will be decided by
23 agreement between the insured person and **us**.

22 Dkt. No. 12-1 at 10 (bolding in original). The UIM policy further provides that
23 “[i]f the insured person and we do not agree on that person’s right to receive

1 damages or on the amount . . . the disagreement will be resolved in a court of
2 competent jurisdiction.” Dkt. No. 12-1 at 12.

3 Allstate argues nonpayment of its \$55,000 settlement offer is “harmonious”
4 with the UIM policy which is “conspicuously silent about any circumstance or
5 obligation where Allstate must make, or Plaintiff can obtain, these ‘undisputed’ or
6 ‘partial’ benefits payments before the claim is fully resolved.” Dkt. No. 10 at 15-16.
7 And Box-Robison’s right to payment becomes ripe only upon the parties’ agreement,
8 or if no agreement, through a court of competent jurisdiction. Dkt. No. 10 at 15.

9 But by its terms, the policy does not require complete agreement regarding
10 all recoverable damages as a precondition to any payment. So an equally plausible
11 interpretation of the insurance policy is that once there is an agreement about any
12 amount owed, it is payable to the insured. Box-Robison argues that while the
13 parties have not reached an agreement about the total extent of her recoverable
14 damages, there is agreement that she is owed at least \$55,000, as shown by
15 Allstate’s last-best settlement offer and her demand for payment of this amount. As
16 Allstate correctly points out, the policy does not say when an agreed upon portion of
17 the damages comes due.

18 The Court cannot say whose interpretation of the insurance policy is correct
19 on this record. Insurance policies are construed just like any other contract.
20 *Panorama Vill. Condo. Owners Ass’n Bd. of Dirs. v. Allstate Ins. Co.*, 26 P.3d 910,
21 913-14 (Wash. 2001). In Washington, “[t]he touchstone of contract interpretation is
22 the parties’ intent.” *Tanner Elec. Co-op. v. Puget Sound Power & Light Co.*, 911 P.2d
23 1301, 1310 (Wash. 1996) (citing *Scott Galvanizing, Inc. v. Nw. EnviroServices, Inc.*,

1 844 P.2d 428, 432 (Wash. 1993)). If a clause within a contract is ambiguous—
2 meaning that on its face, it is susceptible to two interpretations, both of which are
3 reasonable—extrinsic evidence of the parties’ intent may be relied on. *Panorama*
4 *Vill.*, 26 P.3d at 913-14 (Wash. 2001). Extrinsic evidence includes “the
5 circumstances surrounding contract formation, both the parties’ conduct and
6 subsequent acts, and the reasonableness of the parties’ respective interpretations.”
7 *Id.*; *RSD AAP, LLC v. Alyeska Ocean, Inc.*, P.3d 483, 488 (Wash. 2015).

8 The Court lacks the necessary context to construe the contract. This point is
9 illustrated by *Beasley*, 517 P.3d at 519, a case cited by both parties. In *Beasley*, the
10 insurer offered \$10,000 to settle a UIM claim. *Id.* at 505-06. The insured rejected
11 the offer as inadequate compensation for his injuries, but he still demanded
12 payment of the offered amount. *Id.* The insurer refused to pay. *Id.* The trial court
13 granted the insured’s Rule 50 motion and instructed the jury that the insurer’s
14 failure to pay the \$10,000 offer was an unreasonable denial of payment of benefits.
15 *Id.* at 507. In an unpublished portion of the opinion, the Washington Court of
16 Appeals recognized that “[a]lthough an insurer is not always obligated to pay an
17 offer that is not accepted by the insured,” “under the specific facts of [the] case,”
18 payment of the \$10,000 was due because the insurer’s employees testified that the
19 \$10,000 offer reflected undisputed UIM benefits owed that should have been paid
20 immediately. *Id.* at 519. Ultimately, the Court of Appeals affirmed the trial court’s
21 Rule 50 order. *Id.*

22 *Beasley* carries no precedential value, but it demonstrates the importance of
23 context in construing Box-Robison’s UIM policy. Because Allstate’s motion in favor

1 of dismissing Box-Robison's extracontractual claims are all premised on its
2 argument about the operation of the policy, summary judgment may not be had on
3 Box-Robison's extracontractual claims.

4 **3.4 Box-Robison's breach of fiduciary and estoppel claims are dismissed.**

5 Allstate argues that Box-Robison's breach of fiduciary duty and estoppel
6 claims should be dismissed. Dkt. No. 10 at 19-20. Box-Robison failed to respond to
7 these arguments in her opposition. *See* Dkt. No. 14.

8 Washington courts have described the relationship between an insurer and
9 its insured as "quasi-fiduciary" duty between an insurer and its insured, *see, e.g.,*
10 *Kosovan v. Omni Ins. Co.*, 496 P.3d 347, 358 (Wash. 2021), but "Washington courts
11 have yet to recognize a claim for breach of fiduciary duty by an insured against an
12 insurer." *Baker v. Phoenix Ins. Co.*, No. C12-1788-JLR, 2014 WL 241882, at *3
13 (W.D. Wash. Jan. 22, 2014). Accordingly, summary judgment on Box-Robison's
14 breach of fiduciary duty claim is appropriate.

15 Box-Robison's estoppel claim fares no better. The Supreme Court of
16 Washington has held that "coverage by estoppel in the first party context is not the
17 appropriate remedy because, unlike third party reservation of rights cases, the loss
18 in the first party situation has been incurred before the insurance company is aware
19 a claim exists." *Coventry Assocs. v. Am. States Ins. Co.*, 961 P.2d 933, 939 (Wash.
20 1998); *see Dees v. Allstate Ins. Co.*, 933 F. Supp. 2d 1299, 1309 (W.D. Wash. 2013)
21 ("Washington law counsels the court to treat UIM coverage like a first-party claim . . .
22 If the insured is making a first-party bad faith claim, then the court may not impose
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1 coverage by estoppel.”). The record reflects Box-Robison is a first-party policy holder
2 of the UIM policy, and therefore her coverage by estoppel claim must also be
3 dismissed.

4 4. CONCLUSION

5 In sum, Allstate’s Motion for Partial Summary Judgment is GRANTED in
6 part and DENIED in part as follows:

- 7 • Plaintiff’s breach of fiduciary duty and estoppel claims are DISMISSED.
- 8 • Defendant’s summary judgment motion is DENIED in all other respects.

9 It is so ORDERED.

10 Dated this 29th day of March, 2024.

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12 _____
Jamal N. Whitehead
13 United States District Judge
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